

SENATE BILL 600

K3, P4

11r0329

By: **Senators Raskin, Kelley, Madaleno, and Stone**

Introduced and read first time: February 4, 2011

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Abusive Work Environments – Employee Remedies**

3 FOR the purpose of prohibiting an employer or employee of an employer from
4 subjecting an employee to an abusive work environment that includes certain
5 abusive conduct that causes certain harm to the employee; stating that an
6 employer or employee is individually liable for a violation of this Act; stating
7 that a certain employer is vicariously liable for a violation of this Act;
8 prohibiting an employer from retaliating against an employee who opposes or
9 resists abusive conduct in the employee’s work environment or takes other
10 action regarding a violation of this Act; authorizing an employee to file an action
11 for a violation of this Act; requiring that a certain action be filed in a certain
12 circuit court and within a certain time period after the last act that constitutes
13 the alleged violation; specifying certain affirmative defenses for an employer or
14 an employee against whom a certain action has been filed; authorizing certain
15 remedies for violations of this Act; prohibiting a circuit court from ordering
16 punitive damages under certain circumstances; limiting the liability of an
17 employer for emotional distress to a certain dollar amount under certain
18 circumstances; requiring an employee who has received workers’ compensation
19 under a certain provision of law to repay the compensation under certain
20 circumstances; stating the intent of the General Assembly; providing for the
21 application of this Act; defining certain terms; and generally relating to abusive
22 work environments.

23 BY adding to

24 Article – Labor and Employment

25 Section 3–1101 through 3–1104 to be under the new subtitle “Subtitle 11.

26 Abusive Work Environments”

27 Annotated Code of Maryland

28 (2008 Replacement Volume and 2010 Supplement)

29

Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The social and economic well-being of Maryland is dependent on
2 healthy and productive employees; and

3 WHEREAS, Between 37 and 59 percent of employees directly experience
4 health-endangering workplace bullying, abuse, and harassment and this type of
5 workplace mistreatment is approximately four times more prevalent than sexual
6 harassment alone; and

7 WHEREAS, Workplace bullying, abuse, and harassment can inflict serious
8 harm on targeted employees, including feelings of shame and humiliation, severe
9 anxiety, depression, suicidal tendencies, impaired immune systems, hypertension,
10 increased risk of cardiovascular disease, and symptoms consistent with
11 posttraumatic stress disorder; and

12 WHEREAS, Abusive work environments can have serious consequences for
13 employers, including reduced employee productivity and morale, higher turnover and
14 absenteeism rates, and increased medical and workers' compensation claims; and

15 WHEREAS, If mistreated employees who have been subjected to abusive
16 treatment at work cannot establish that the behavior was motivated by race, color,
17 gender, sexual orientation, national origin, or age, they are unlikely to be protected by
18 the law against the mistreatment; and

19 WHEREAS, Legal protection from abusive work environments should not be
20 limited to behavior affecting individuals in certain protected classes as is the case
21 under employment discrimination statutes; and

22 WHEREAS, Existing workers' compensation plans and common-law tort
23 actions are inadequate to discourage workplace abuse or to provide adequate relief to
24 employees who have been harmed by abusive work environments; now, therefore,

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Labor and Employment**

28 **SUBTITLE 11. ABUSIVE WORK ENVIRONMENTS.**

29 **3-1101.**

30 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
31 **INDICATED.**

32 **(B) (1) “ABUSIVE CONDUCT” MEANS ACTS OF AN EMPLOYER OR**
33 **EMPLOYEE TARGETED AT AN INDIVIDUAL EMPLOYEE THAT A REASONABLE**
34 **INDIVIDUAL WOULD EXPERIENCE AS CREATING A HOSTILE WORK**

1 ENVIRONMENT BASED ON THE SEVERITY, NATURE, AND FREQUENCY OF THE
2 EMPLOYER’S OR EMPLOYEE’S CONDUCT.

3 (2) “ABUSIVE CONDUCT” INCLUDES:

4 (I) REPEATED VERBAL ABUSE, INCLUDING THE USE OF
5 DEROGATORY AND DISPARAGING REMARKS, INSULTS, AND EPITHETS;

6 (II) VERBAL OR PHYSICAL CONDUCT OF A THREATENING,
7 INTIMIDATING, HUMILIATING, OR CRUEL NATURE; OR

8 (III) THE SABOTAGE OR UNDERMINING OF ANOTHER
9 EMPLOYEE’S WORK PERFORMANCE.

10 (C) “ADVERSE EMPLOYMENT ACTION” INCLUDES:

11 (1) TERMINATION;

12 (2) DEMOTION;

13 (3) UNFAVORABLE REASSIGNMENT;

14 (4) FAILURE TO PROMOTE;

15 (5) DISCIPLINARY ACTION; OR

16 (6) REDUCTION IN COMPENSATION.

17 (D) “EMPLOYEE” INCLUDES AN INDIVIDUAL EMPLOYED BY A
18 GOVERNMENTAL UNIT.

19 (E) “EMPLOYER” INCLUDES A GOVERNMENTAL UNIT.

20 3-1102.

21 IT IS THE PURPOSE OF THE GENERAL ASSEMBLY IN ENACTING THIS
22 SUBTITLE TO PROVIDE:

23 (1) A LEGAL INCENTIVE FOR EMPLOYERS TO PREVENT AND
24 CORRECT ABUSIVE WORK ENVIRONMENTS UNDER THE EMPLOYER’S CONTROL;
25 AND

1 **(2) LEGAL RELIEF FOR EMPLOYEES WHO HAVE BEEN HARMED**
2 **PSYCHOLOGICALLY, PHYSICALLY, OR FINANCIALLY BY BEING DELIBERATELY**
3 **SUBJECTED TO ABUSIVE CONDUCT AND A HOSTILE WORK ENVIRONMENT.**

4 **3-1103.**

5 **(A) (1) AN EMPLOYER OR EMPLOYEE OF AN EMPLOYER MAY NOT**
6 **SUBJECT AN EMPLOYEE TO AN ABUSIVE WORK ENVIRONMENT THAT INCLUDES**
7 **ABUSIVE CONDUCT SO SEVERE THAT IT CAUSES AN ACTUAL MATERIAL**
8 **IMPAIRMENT OF MENTAL HEALTH OR PHYSICAL HEALTH.**

9 **(2) AN EMPLOYER OR EMPLOYEE IS INDIVIDUALLY LIABLE FOR A**
10 **VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION THAT IS COMMITTED BY**
11 **THE EMPLOYER OR EMPLOYEE, RESPECTIVELY.**

12 **(3) AN EMPLOYER OF AN EMPLOYEE WHO VIOLATES PARAGRAPH**
13 **(1) OF THIS SUBSECTION IS VICARIOUSLY LIABLE FOR THE ACTIONS OF THE**
14 **EMPLOYEE.**

15 **(B) AN EMPLOYER MAY NOT RETALIATE IN ANY MANNER, INCLUDING**
16 **TAKING ADVERSE EMPLOYMENT ACTION, AGAINST AN EMPLOYEE WHO HAS:**

17 **(1) OPPOSED OR RESISTED ANY ABUSIVE CONDUCT IN THE**
18 **EMPLOYEE'S WORK ENVIRONMENT; OR**

19 **(2) FILED AN ACTION FOR A VIOLATION OF THIS SECTION OR**
20 **TESTIFIED, ASSISTED, OR PARTICIPATED IN ANY MANNER IN AN INVESTIGATION**
21 **OR PROCEEDING REGARDING A VIOLATION OF THIS SECTION.**

22 **3-1104.**

23 **(A) (1) AN EMPLOYEE MAY FILE AN ACTION AGAINST THE EMPLOYER**
24 **OF THE EMPLOYEE OR ANOTHER EMPLOYEE OF THE EMPLOYER FOR A**
25 **VIOLATION OF § 3-1103 OF THIS SUBTITLE.**

26 **(2) AN ACTION FILED UNDER PARAGRAPH (1) OF THIS**
27 **SUBSECTION:**

28 **(I) SHALL BE FILED IN THE CIRCUIT COURT FOR THE**
29 **JURISDICTION WHERE THE EMPLOYER IS LOCATED; AND**

30 **(II) MUST BE FILED NOT LATER THAN 1 YEAR AFTER THE**
31 **LAST ACT THAT CONSTITUTES THE ALLEGED VIOLATION OF § 3-1103 OF THIS**
32 **SUBTITLE.**

1 **(B) IT IS AN AFFIRMATIVE DEFENSE FOR AN EMPLOYER OR EMPLOYEE**
2 **AGAINST WHOM AN ACTION UNDER SUBSECTION (A) OF THIS SECTION HAS BEEN**
3 **FILED THAT:**

4 **(1) (I) THE EMPLOYER EXERCISED REASONABLE CARE TO**
5 **PREVENT AND CORRECT PROMPTLY ANY VIOLATION OF § 3-1103(A) OF THIS**
6 **SUBTITLE BY AN EMPLOYEE OF THE EMPLOYER; AND**

7 **(II) THE EMPLOYEE WHO FILED THE ACTION AGAINST THE**
8 **EMPLOYER UNREASONABLY FAILED TO TAKE ADVANTAGE OF APPROPRIATE**
9 **PREVENTIVE OR CORRECTIVE OPPORTUNITIES PROVIDED BY THE EMPLOYER;**

10 **(2) THE EMPLOYEE VIOLATED § 3-1103(A) OF THIS SUBTITLE AT**
11 **THE DIRECTION OF THE EMPLOYEE'S EMPLOYER, UNDER THE THREAT OF**
12 **ADVERSE EMPLOYMENT ACTION; OR**

13 **(3) THE ACTION IS BASED ON:**

14 **(I) AN ADVERSE EMPLOYMENT ACTION REASONABLY MADE**
15 **FOR POOR PERFORMANCE, MISCONDUCT, OR ECONOMIC NECESSITY;**

16 **(II) A REASONABLE PERFORMANCE EVALUATION; OR**

17 **(III) AN EMPLOYER'S OR EMPLOYEE'S REASONABLE**
18 **INVESTIGATION INTO POTENTIALLY ILLEGAL OR UNETHICAL ACTIVITY OF THE**
19 **EMPLOYEE WHO FILED THE ACTION.**

20 **(C) (1) IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW**
21 **AND EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF AN**
22 **EMPLOYER OR EMPLOYEE IS FOUND TO BE LIABLE FOR A VIOLATION OF §**
23 **3-1103 OF THIS SUBTITLE, THE CIRCUIT COURT MAY:**

24 **(I) ENJOIN THE EMPLOYER OR EMPLOYEE FROM ENGAGING**
25 **IN CONDUCT THAT VIOLATES § 3-1103 OF THIS SUBTITLE; AND**

26 **(II) ORDER ANY OTHER RELIEF THAT IS DEEMED**
27 **APPROPRIATE, INCLUDING:**

28 **1. REINSTATEMENT OF THE EMPLOYEE WHO FILED**
29 **THE ACTION UNDER SUBSECTION (A) OF THIS SECTION;**

1 **2. REMOVAL OF THE EMPLOYEE WHO VIOLATED §**
2 **3-1103 OF THIS SUBTITLE FROM THE WORK ENVIRONMENT OF THE EMPLOYEE**
3 **WHO FILED THE ACTION;**

4 **3. BACK PAY;**

5 **4. REIMBURSEMENT OF MEDICAL EXPENSES;**

6 **5. COMPENSATION FOR EMOTIONAL DISTRESS;**

7 **6. PUNITIVE DAMAGES; OR**

8 **7. ATTORNEY'S FEES.**

9 **(2) IF THE EMPLOYER DID NOT TAKE ADVERSE EMPLOYMENT**
10 **ACTION AGAINST THE EMPLOYEE, THE LIABILITY OF THE EMPLOYER FOR**
11 **VIOLATIONS OF § 3-1103 OF THIS SUBTITLE FOR DAMAGES FOR EMOTIONAL**
12 **DISTRESS MAY NOT EXCEED \$7,500 AND THE CIRCUIT COURT MAY NOT ORDER**
13 **PUNITIVE DAMAGES.**

14 **(D) AN EMPLOYEE SHALL REPAY ANY WORKERS' COMPENSATION**
15 **RECEIVED UNDER TITLE 9 OF THIS ARTICLE IF:**

16 **(1) THE WORKERS' COMPENSATION WAS AWARDED TO THE**
17 **EMPLOYEE FOR INJURIES THAT RESULTED FROM A VIOLATION OF § 3-1103 OF**
18 **THIS SUBTITLE; AND**

19 **(2) THE EMPLOYEE IS AWARDED MONETARY DAMAGES UNDER**
20 **SUBSECTION (C) OF THIS SECTION AS A RESULT OF THE SAME VIOLATION FOR**
21 **WHICH WORKERS' COMPENSATION WAS AWARDED.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
23 construed to apply only prospectively and may not be interpreted to create a cause of
24 action based on acts of an employer or employee that occurred before the effective date
25 of this Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2011.